

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

VETERINARY HOSPITAL MANAGERS)
ASSOCIATION, INC.)
)
Plaintiff,)
)
vs.) No. 2:08-cv-2647-JPM-tmp
)
)
MARCUS D. DORRIS, an individual,)
and POPE ANIMAL CLINIC, INC.,)
)
Defendants.)

**ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S
MOTION TO DEEM REQUESTS FOR ADMISSION AS ADMITTED**

Before the Court is Plaintiff Veterinary Hospital Managers Association, Inc.'s Motion to Deem Requests for Admission as Admitted (Docket Entry ("D.E.") 20), filed November 13, 2009. Plaintiff served its First Request for Admissions on August 24, 2009. (See id. at 1.) As of December 8, 2009, Defendants have failed to respond to both Plaintiff's request and the instant motion.

Under Federal Rule of Civil Procedure 36(a)(3), "[a] matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney." Fed. R. Civ. P. 36(a)(3); see also Goottee v. Colt Indus., Inc., 712 F.2d 1057, 1063 n.6 (6th

Cir. 1983). Defendants have failed to respond within the time provided for in Rule 36, and thus at least some of the matters in Plaintiff's First Request for Admissions are deemed admitted.

As the Sixth Circuit recently explained, "[r]equests for admission may relate to [facts and] the application of law to fact. Such requests should not be confused with pure requests for opinions of law, which are not contemplated by the rule. Nor are requests seeking legal conclusions appropriate when proceeding under Rule 36." United States v. Petroff-Kline, 557 F.3d 285, 293 (6th Cir. 2009) (quoting 7 Moore's Federal Practice § 36-26 (3d ed. 2008)).

Accordingly, the matters in Plaintiff's First Request for Admissions are DEEMED ADMITTED to the extent they are requests for facts or the application of law to facts. Requests for opinions of law and legal conclusions in Plaintiff's request are NOT DEEMED ADMITTED. The Court will illustrate this holding without undertaking a full analysis of all twenty-eight requests for admission. Request for Admission No. 5, which asks Defendants to "Admit that you have not been certified by Plaintiff as a Certified Veterinary Practice Manager," is a question of fact and is thus deemed admitted. By contrast, Request for Admission No. 8, which asks Defendants to "Admit that your use of Plaintiff's Mark constitutes trademark infringement," is a request for an ultimate legal conclusion and

is thus not deemed admitted. See Petroff-Kline, 557 F.3d at 293.

IT IS SO ORDERED this 11th day of December, 2009.

/s/ Jon P. McCalla

JON P. McCALLA

CHIEF U.S. DISTRICT JUDGE